

ORDINANCE NO. 1305

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING ESTABLISHING A LOCAL DEVELOPMENT MITIGATION FEE FOR FUNDING THE PRESERVATION OF NATURAL ECOSYSTEMS IN ACCORDANCE WITH THE WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN.

WHEREAS, the City Council of the City of Banning ("City") finds that the ecosystems of the City and western Riverside County, and the vegetation communities and sensitive species they support are fragile, irreplaceable resources that are vital to the general welfare of all residents;

WHEREAS, these vegetation communities and natural areas contain habitat value which contributes to the City's and the region's environmental resources;

WHEREAS, special protections for these vegetation communities and natural areas must be established to prevent future endangerment of the plant and animal species that are dependent upon them;

WHEREAS, adoption and implementation of this Ordinance will help to enable the City to achieve the conservation goals set forth in the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"), adopted by the City Council on November 12, 2003, to implement the associated Implementing Agreement executed by the City Council on November 12, 2003, and to preserve the ability of affected property owners to make reasonable use of their land consistent with the requirements of the National Environmental Policy Act ("NEPA"), the California Environmental Quality Act ("CEQA"), the Federal Endangered Species Act ("FESA"), the California Endangered Species Act ("CESA"), the California Natural Community Conservation Planning Act ("NCCP Act") and other applicable laws;

WHEREAS, the purpose and intent of this Ordinance is to establish a Local Development Mitigation Fee to assist in the maintenance of biological diversity and the natural ecosystem processes that support this diversity; the protection of vegetation communities and natural areas within the City and western Riverside County which are known to support threatened, endangered or key sensitive populations of plant and wildlife species; the maintenance of economic development within the City by providing a streamlined regulatory process from which development can proceed in an orderly process; and the protection of the existing character of the City and the region through the implementation of a system of reserves which will provide for permanent open space, community edges, and habitat conservation for species covered by the MSHCP;

WHEREAS, the findings set forth herein are based on the MSHCP and the studies referenced therein, and the estimated acquisition costs for such property as set forth in the MSHCP, a copy of which is on file in the City Clerk's office;

WHEREAS, pursuant to Article 11, Section 7 of the California Constitution, the City is authorized to enact measures that protect the health, safety and welfare of its citizens;

WHEREAS, pursuant to Government Code sections 66000 et seq., the City is empowered to impose fees and other exactions to provide necessary funding and public facilities required to mitigate the negative effect of new development projects;

WHEREAS, on November 12, 2003 the City Council took action on the MSHCP and the associated Implementing Agreement, and made appropriate findings pursuant to CEQA; and

WHEREAS, pursuant to Government Code sections 66016, 66017 and 66018, the City has: (a) made available to the public, at least ten (10) days prior to its public hearing, data indicating the estimated cost required to provide the facilities and infrastructure for which these development fees are levied and the revenue sources anticipated to provide those facilities and infrastructure; (b) mailed notice at least fourteen (14) days prior to this meeting to all interested parties that have requested notice of new or increased development fees; and (c) held a duly noticed, regularly scheduled public hearing at which oral and written testimony was received regarding the proposed fees.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS. The City Council finds and determines as follows:

A. The preservation of vegetation communities and natural areas within the City and western Riverside County which support species covered by the MSHCP is necessary to protect and promote the health, safety and welfare of all the citizens of the City by reducing the adverse direct, indirect and cumulative effects of urbanization and development and providing for permanent conservation of habitat for species covered by the MSHCP.

B. It is necessary to enact and implement certain development impact fees to ensure that all new development within the City pays its fair share of the costs of acquiring and preserving vegetation communities and natural areas within the City and the region which are known to support plant and wildlife species covered by the MSHCP.

C. A proper funding source to pay the costs associated with mitigating the direct, indirect and cumulative impacts of development to the natural ecosystems within the City and the region, as identified in the MSHCP, is a development impact fee for residential, commercial, and industrial development. The amount of the fee is determined by the nature and extent of the impacts from the development to the identified natural ecosystems and or the relative cost of mitigating such impacts.

D. The MSHCP and the Nexus Fee Report, a copy of which is on file in the City Clerk's office, provides a basis for the imposition of development impact fees on new construction.

E. The use of the development impact fees to mitigate the impacts to the City's and the region's natural ecosystems is reasonably related to the type and extent of impacts caused by development within the City.

F. The costs of funding the proper mitigation of natural ecosystems and biological resources impacted by development within the City and the region are apportioned relative to the type and extent of impacts caused by the development.

G. The facts and evidence provided to the City establish that there is a reasonable relationship between the need for preserving the natural ecosystems in the City and the region, as defined in the MSHCP, and the direct, indirect and cumulative impacts to such natural ecosystems and biological resources created by the types of development on which the fee will be imposed, and that there is a reasonable relationship between the fee's use and the types of development for which the fee is charged. This reasonable relationship is described in more detail in the MSHCP and the Nexus Fee Report.

H. The cost estimates for mitigating the impact of development on the City's and the region's natural ecosystem and biological resources, as set forth in the MSHCP, are reasonable and will not exceed the reasonably estimated total of these costs.

I. The fee set forth herein does not reflect the entire cost of the lands which need to be acquired in order to implement the MSHCP and mitigate the impact caused by new development. Additional revenues will be required from other sources. The City Council finds that the benefit to each development project is greater than the amount of the fee to be paid by the project.

J. The fees collected pursuant to this Ordinance shall be used to finance the acquisition of the natural ecosystems and certain improvements described or identified in the MSHCP.

SECTION 2: ARTICLE II is hereby added to Chapter 33 of the Banning Ordinance Code. It is entitled "MSHCP Mitigation Fee". Article II shall read as follows:

SECTION 33-10. ADMINISTRATIVE RESPONSIBILITY. The Community Development Director and the Public Works Director of the City shall be jointly responsible for the administration of this Article II of Chapter 33. Detailed administrative procedures concerning the implementation shall be established and set forth in a resolution adopted by the City Council.

SECTION 33-11. DEFINITIONS. As used in this Article II, the following terms shall have the following meanings:

- A.** Certificate of Occupancy means a certificate of occupancy issued by the City in accordance with all applicable ordinances, regulations, and rules of the City and state law.
- B.** Credit means a credit allowed pursuant to Section 33-12 of this Article II, which may be applied against the development impact fee paid.
- C.** Development Project or Project means any project undertaken for the purpose of development pursuant to the issuance of a building permit by the City pursuant to all applicable ordinances, regulations, and rules of the City and state law.
- D.** Final Inspection means a final inspection of a project as defined by the building codes of the City.
- E.** Gross Acreage means the total property area as shown on a land division map of record, or described through a recorded legal description of the property. This area shall be bounded by road right-of-way and/or legal property lines.
- F.** Local Development Mitigation Fee or Fee means the development impact fee imposed pursuant to the provisions of this Article II.
- G.** Multiple Species Habitat Conservation Plan or MSHCP means the Western Riverside County Multiple Species Habitat Conservation Plan, adopted by the City Council on November 12, 2003.
- H.** MSHCP Conservation Area has the same meaning and intent as such term is defined and utilized in the MSHCP.
- I.** Project Area means the area, measured in acres, from the adjacent road right-of-way line to the limits of project improvements. Project Area includes all project improvements and areas that are disturbed as a result of the project improvements on an owner's Gross Acreage, including all areas depicted on the forms required to be submitted to the City pursuant to this Ordinance and/or other applicable development ordinance or regulation of the City. Except as otherwise provided herein, the Project Area is the area upon which the project will be assessed the Local Development Mitigation Fee.
- J.** Residential Unit means a building or portion thereof used by one family and containing but one kitchen, which unit is designed or occupied for residential purposes, including single-family, multiple-family dwellings, and mobile homes on a permanent foundations, but not including hotels and motels.